

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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W.P. NO. 11396 of 1998

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DATED: 27.6.2007

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Between:-

P. Rama Chandraiah.

..PETITIONER

And

A.P. State Road Transport Corporation, represented by its Managing
Director, Mushirabad, Hyderabad-20 and 3 others.

...RESPONDENTS

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P. NO. 11396 of 1998

ORDER

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Petitioner seeks a Mandamus to declare the action of the 2nd respondent in proceedings dated 06-04-1998 confirming the orders passed by the 3rd respondent in proceedings dated 14.09.1993 withdrawing the stagnation increment and recovering the amounts paid, as arbitrary and illegal.

Facts, in brief, are that the petitioner had joined in service of the respondent corporation as a Grade-II Mechanic on 10.05.1978. The Corporation had issued circular dated 25.09.1989 that all the employees with I.T.I. qualifications appointed to the posts of Cleaner/Khalasy or promoted, recruited to the post of Helper, Artisan Grade-II and Artisan Grade-I, as the case may be, and had completed 12 years of service in the same post without any promotion, were entitled automatically for the next higher scale without change in their existing designation. Pursuant to the said circular, the Senior Manager (Personnel), Cuddapah, is said to have addressed a letter to the 3rd respondent on 10.04.1992 to review and regularize and place the petitioner in the special grade with effect from 10.05.1990 instead of 01.05.1991 by virtue of his I.T.I.

qualification. Pursuant to the orders of the Senior Manager (Personnel), the 3rd respondent passed orders dated 18.04.1992 placing the petitioner in the special grade with effect from 10.05.1990, since he was appointed as a Mechanic Grade-II with I.T.I. qualification with effect from 10.05.1978. Petitioner was promoted as Grade-I Mechanic from 01.07.1990. The 3rd respondent withdrew the stagnation increment granted to the petitioner and ordered recovery of the amount paid to him. Petitioner would contend that since he had completed 12 years of service as Grade-II Mechanic as on 10.05.1990, he was entitled for the benefit of special grade and that his subsequent promotion on 01-07-1990 could not be a ground to deprive him of the special grade increment which was given to him consequent to his completion of 12 years of service. The 3rd respondent, in his proceedings dated 14.09.1993, after having issued a notice to the petitioner to show cause why the order placing him in the higher grade should not be cancelled, and on receipt of his reply thereto, held that in view of the circular dated 31.10.1992 the petitioner was not eligible for placement in the higher grade and, accordingly, his being placed in the higher grade was cancelled and the amount, if any, paid was directed to be recovered in easy installments. Aggrieved thereby, the petitioner filed W.P. No. 15128 of 1993 and this Court, by order dated 23.12.1997, directed the 2nd respondent to dispose of the appeal filed by the petitioner on 26.09.1993 in accordance with law.

The 2nd respondent examined the petitioner's appeal with reference to the Regulation 9 (1) (c) (iii) of the A.P.S.R.T.C. Pay & Allowance Regulations as amended vide Notification dated 27.07.1989. The 2nd respondent held that the petitioner was appointed as Mechanic Grade-II with effect from 10.5.1978 and was promoted as Mechanic Grade-I with effect from 01-07-1990 and since the circular dated 25.09.1989 was issued directing placement of employees in the next higher scale without change in their designation and, since the Memo dated 29.01.1990 was issued directing that employees be placed in higher scale with effect from the first of May every year, the petitioner was placed in the higher scale with effect from 01.05.1991, since he completed 12 years of service only by 10.05.1990. The 2nd respondent held that since the petitioner was promoted as Mechanic Grade-I with effect from 01.07.1990, there was no stagnation on the next date of review i.e. 01.05.1991 and, therefore, was ineligible to be placed in the higher scale since there was no stagnation as on the date of review and date of eligibility and, accordingly, the higher grade scale sanctioned to him was withdrawn. The 2nd respondent held that the petitioner would have been entitled for higher scale with effect from 01.05.1991 if he had not been promoted to the higher post before that date, that since he was promoted as Mechanic Grade-I with effect from 01.07.1990 there was no stagnation on the date of next review i.e. 01.05.1991, that the Divisional Manager, Anantapur had wrongly sanctioned special grade with effect

from 10.05.1990, though the petitioner was entitled for special grade only with effect from 01.05.1991 had he not been promoted by that date and since the petitioner was promoted as Grade-I Mechanic with effect from 01.07.1990, the action taken by the Divisional Manager in granting him the special grade with effect from 10.5.1990 was not in accordance with the memo dated 29.1.1990 necessitating its cancellation. The 2nd respondent opined that cancellation of an improperly sanctioned special grade to the petitioner by the then Divisional Manager and the order to recover was appropriate and was in accordance with the circular instructions. The Regional Manager, Anantapur region was directed to take necessary action for implementing the order dated 14.09.1993 and to arrange for re-fixation of pay consequent upon cancellation of special grade and recovery of excess amount paid thereon, duly following the provisions of Payment of Wages Act.

Sri A.K. Jayaprakash Rao, learned counsel for the petitioner, would contend that since the petitioner had completed 12 years of service as on 10.5.1990, he was entitled to be placed in the special grade with effect from that date and merely because he was subsequently promoted as Mechanic Grade-I with effect from 01.07.1990 did not enable the respondents to withdraw the special grade benefits already given to the petitioner. Learned counsel would submit that, in any event, since the amount directed to be paid to the petitioner was not on account of any fraud or misrepresentation on his behalf, respondents were not justified in directing recovery of the

amount already been paid to the petitioner.

Neither is any counter-affidavit filed on behalf of the respondents nor is there any representation on their behalf when the matter was heard.

As noted above, the benefit of special grade is given to those employees who have been stagnating in the same post without the benefit of promotion for a period of 12 years. As held by the 2nd respondent since the petitioner completed 12 years of service as Mechanic Grade-II with effect from 10.5.1990, he was entitled to be given the benefit of special grade from 01.05.1991, the date of annual review. Even prior to the date of review i.e. 01.05.1991 the petitioner was promoted as Mechanic Grade-I with effect from 01.07.1990. Since the benefit of special grade was extended only to such of those employees who were stagnating in the same grade without being given promotion, the benefit of special grade was limited to such of those employees who were not given promotion to higher posts. Petitioner, however, was promoted as Mechanic Grade-I on 01.07.1990 and, since he could no longer be held to be stagnating in the same post he was not entitled to the benefit of special grade. The action of the respondents in holding that he was not entitled to the benefit of special grade cannot be faulted.

With regards recovery of the amounts already paid, it is necessary to note that the petitioner was paid the amount which he was

not entitled to under the rules and regulations of the Corporation. The mere fact that a mistake had occurred in extending him the benefit would not entitle the petitioner to contend that the respondents should perpetuate the mistake and not take measures to correct it. Since the petitioner was not entitled for the benefits of special grade, the amount which has already been paid to him, must necessarily be recovered. The fact, however, remains that recovery of the entire amount, paid to the petitioner over a period of several years, in one lumpsum would undoubtedly be harsh. Ends of justice would be met, if while upholding the action of the respondents in canceling the benefit of special grade given to the petitioner, respondents were directed to examine the feasibility of recovering the special grade benefits already paid to the petitioner in easy monthly installments and, thereafter, take action in accordance with law.

The writ petition is, accordingly, disposed of. No costs.

RAMESH RANGANATHAN, J

Dated: 27.6.2007

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